IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 17223 of 2005

Between:

K. Somasekhara Rao, S/o. Nagaiah,
Chairman, Person-in Charge Committee,

Primary Agricultural Coooperatives Societies Ltd,
Ethonda, Kotagiri Mandal, Nizamabad.

..... PETITIONER

AND

1. Government Of A.P. rep.by its Principal Secretrary Agriculture

& Cooperation Department A.P. Secretariat,Hyderabad.
2. The Commissioner and Registrar Of Coop Societies

A.P.Gruhakalpa, M.J.Road, Hyderabad.
3. The District Coop. Officer/Joint Registrar of Coop.Societies

Nizamabad District.
4. The General Manager, District Coop. Gentral Bank,

Nizamabad.

.....RESPONDENTS

ORAL ORDER:

The petitioner is the Former Chairman and Person-in-charge Committee of the Primary Agricultural Cooperative Society Limited, Ethonda, Kotagiri Mandal, Nizamabad District. He assails the proceedings No. Rc.No.2372/2000/C, dated 07.07.2004, appointing an official person-in-charge in the place of the non-official person-in-charge to the Ethonda P.A.C.S.

2. It is however, brought to the notice of this Court by the learned Government Pleader for Cooperation that subsequent to the initial appointment of an official person-in-charge by the proceedings, dated 07.07.2004, the same was being renewed from time to time. By an order, dated 26.06.2005, of the third respondent herein, the Branch Manager, District Cooperative Central Bank, Kotagiri Branch was reappointed as an Official Person-in-Charge of P.A.C.S., Ethonda. Again by proceedings, dated 29.07.2005, the third respondent extended the term of the official person-in-charge of the Ethonda and the other societies for a further period of six months from the date of expiry of the pre-existing term. Each of these successive orders of appointment of official persons-in-charge virtually, is till the elections are completed or the specified term is over whichever is the earlier.

The term of the elected managing committee of the Ethonda PACS was over in the year 2000. For more than five years now the several Primary Agricultural Cooperative Societies including the Ethonda society are being administered for some time by the once elected management as persons-in-charge and thereafter, since July, 2004 by official persons-in-charge, whose term is being renewed from time to time. No elections were held since the year 2000. The essential and basic scheme of the A.P. Cooperative Societies Act, 1964, that the Cooperative Societies be managed by elected members and that management of Cooperative Societies by nominated officials or members, constitutes a subversion and aberration of the democratic charter mandated by the statute, has been violated.

3. The Learned Government Pleader has submitted that " the previous Government has failed to conduct the elections after the expiry of the term of the elected management", and that "the present Government has since assumption of office taken active steps to put the democratic process back on rails but for one reason or the other had been unable to do so".

Inter alia, the circumstances put forth by the learned Government Pleader for the inability to restore the democratic character to the Cooperative Societies is that appointments of persons-in-charge to the various Primary Agricultural Cooperative Societies were challenged in this Court and various interim orders are passed. No order of any Court, interdicting conduct of the elections to PACS has been brought to the notice of this Court. In the absence of any such interdiction, the responsibility or accountability for the interminable postponement of the democratic process must rest squarely and exclusively with the State. It must be noticed that under the Constitution of India there is no concept of "the present" or "previous Government". The State is constitutional continuous with no hiatus, Government is a continuous uninterrupted constitutional continuum. Therefore, the accountability of the State for the subversion of the democratic processes and purposes of the A.P. Cooperative Societies Act, 1964, insofar as the interminable postponement of the democratic process in the governance of Cooperative Societies, commenced in the year 2000, when the term of elected committees has come to an end and is continued regardless of the change in the occupancy of the political establishment.

4. It is stated by the learned Government Pleader that power inheres in the Registrar under Section 32(7) of the A.P. Co- Operative Societies Act 7 of 1964 (for short the Act) to call for a general meeting (of the society's) for election of a new committee, at any time and at the expiration of the period of appointment of person or persons appointed to manage the affairs of the society, in the absence of an elected committee. Section 32(7) of the Act reads as follows:

> (7)(a) If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the Government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed(three years).

(b) The person or persons so appointed shall, subject to the control of the Government or as the case may be, of the Registrar and subject to such instructions or directions as they may issue, from time to time, have power to exercise all or any of the functions of the committee or any officer of the society and to take all such actions as may be required in the interest of the society)

c) The Registrar may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs if any, incurred in the management of the society shall be payable out of the funds of the society.

d) The Registrar may at any time, and shall at the expiration of the period of appointment of person or persons so appointed, arrange for calling of a general meeting for the election of a new committee in such manner as may be prescribed. The person or persons so appointed shall cease to manage the affairs of the society on the new committee entering upon its office)

5. Under Section 31(2) of the Act the term of office inter alia of a committee which is elected is for five years from the date of election of the members of the committee. In respect of a society which do not receive State aid (as specified under Section 43 of the Act), it is the responsibility of the incumbent committee of such society to hold elections to the office of the members of the committee in the manner specified in the by laws, before expiry of the term.

6. It is not clear at this point of time whether in respect of the Ethonda society, the incumbent committee during its elected term of office had initiated proceedings for conduct of elections and if not whether any action was taken against such elected committee for the lapse. After the term of the committee was over, it is stated by the learned Government Pleader, powers under Section 32 (7) of the Act come in to play in so far as elections to such societies, which do not have an elected committee.

As per Section 32 (7) a person-in-charge committee could be appointed to manage the affairs of the society for a period specified in the sub-section, if there is no committee or in the opinion of the Government or the Registrar, it is not possible to call for a general meeting for the purpose of conducting election of members of the committee. After the term of the elected committee came to an end (in 2000), it is perhaps possible for the Registrar to have been satisfied that there was no committee and therefore, it was legitimate appoint a persons-in-charge committee,

but there appears no justification whatsoever for the satisfaction to continue for ever. It is not known and not stated why the Registrar continues to be satisfied (for five years now) that it is not possible to call for a general meeting (of the Ethonda) for conducting elections of the society. The basis of such satisfaction implied in the succession of orders appointing unofficial and official persons-in-charge is not stated and there appears none from the submission of the learned Government Pleader. All the reasons submitted for the continuous course of supersession of the democratic character of the Agricultural Cooperative societies management powers are irrelevant and do not mitigate the illegal conduct of the state action and subversion of the substantive provisions of the Act.

7. The petitioner claims to have been a Chairman of the person-in-charge committee prior to 07.07.2004. Subsequently an official persons-in-charge committee has been appointed by the respondents. In view of the chronology of events, it is neither possible nor desirable to put the clock back beyond an year and direct consideration of the petitioners case for appointment as a person-in-charge committee.

8. However in view of the analysis above, this Court finds no scintilla of justification for the continued supersession of democratic management of primary Agricultural Cooperative Societies in general and Ethonda PACS in particular.

9. The respondents are accordingly, directed to forthwith and within a week from the date of receipt of a copy of this order, initiate without demur or default the process to conduct elections and ensure the occupancy of the management of the Ethonda P.A.C.S by an elected management committee at the earliest point of time permissible under the provisions of the A.P. Cooperative Societies Act and the relevant rules there under. In this, the respondents shall fail not.

10. The Writ Petition is disposed of at the stage of admission with the above directions after hearing the Government Pleader for Co-operation.

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09-08-2005

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